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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,295	11/21/2003	Carl Berger	163.1.004	3011
Allen R. Kipnes	7590 03/03/200 s, Esq.	9	EXAM	INER
WATOV & KIPNES, P.C.			SCHLIENTZ, NATHAN W	
P.O. Box 247 Princeton Junct	ion, NJ 08550		ART UNIT	PAPER NUMBER
			1616	
			MAIL DATE	DELIVERY MODE
			03/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)	
Examiner-Initiated Interview Summary 10/719,295 BERGER, C		BERGER, CARL	
Examiner initiated interview daminary	Examiner	Art Unit	
	Nathan W. Schlientz	1616	
All Participants:	Status of Application: <u>pen</u>	nding	
(1) Nathan W. Schlientz.	(3)		
(2) Allen R. Kipnes.	(4)		
Date of Interview: 25 February 2009	Time: <u>11:00</u>		
Type of Interview: ☐ Telephonic ☐ Video Conference ☐ Personal (Copy given to: ☐ Applicant ☐ Applic Exhibit Shown or Demonstrated: ☐ Yes ☐ No If Yes, provide a brief description: .	cant's representative)		
Part I.			
Rejection(s) discussed:			
Claims discussed: none			
Prior art documents discussed: Musser et al. (Nature, 2002, 416, 599-600)			
Part II. SUBSTANCE OF INTERVIEW DESCRIBING THE GENE See Continuation Sheet	ERAL NATURE OF WHAT WAS	S DISCUSSED:	
Part III.			
 It is not necessary for applicant to provide a separate directly resulted in the allowance of the application. The of the interview in the Notice of Allowability. It is not necessary for applicant to provide a separate did not result in resolution of all issues. A brief summand. 	ne examiner will provide a written record of the substance of the	en summary of the interview, since	ne substance
/John Pak/ Primary Examiner, Art Unit 1616	Applicant/Applicant's Representat	ive Signature – if ε	appropriate)

Continuation of Substance of Interview including description of the general nature of what was discussed: The examiner called attorney Kipnes with a follow up question following the interview on 17 Febraruy 2009. The examiner directed attention to page 14, lines 2-15 of the instant specification wherein it teaches that a preferred embodiment of the invention is to treat the tobacco plant by contacting with an herbivore, such as Helicoverpa zea, for a sufficient time to reduce the nicotine content to levels at which the tobacco product produced from the plant becomes non-addictive to humans. The question asked by the examiner is whether this occurs in nature, because it appears that the specification teaches that allwoing H. zea to feed on tobacco plants for a sufficient amount of time will naturally result in tobacco with non-addictive levels.

Attorney Kipnes argued that there is no evidence to suggest that this occurs in nature, and to the best of his knowledge there is no such thing as non-addictive tobacco plants occurring in the wild as a result of being fed on by H. zea or any other herbivore. Attorney Kipnes argued that based on the teachings of Musser et al., one of ordinary skill in the art would expect that when the tobacco plant is damaged by the caterpillar H. zea, it increases its production of nicotine. However, the H. zea regurgitates saliva that contains glucose oxidase, which counter acts the nicotine production resulting in nicotine levels in the tobacco plant that are the same as the level prior to damage by the caterpillar. Therefore, attorney Kipnes argues that one or ordinary skill in the art in view of the teachings of Musser et al. would expect that feeding by the caterpillar H. zea only results in nicotine levels that are the same as non-damaged tobacco plants.